

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

PAUL ERIC PRESLEY,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 6:14-cv-00324-AC

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge John V. Acosta issued Findings and Recommendation in this case on July 29, 2014. Dkt. 22. Judge Acosta recommended that Plaintiff's Petition for Writ of Habeas Corpus be denied and a judgment of dismissal be entered. No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1)(C). If a party files objections to a magistrate's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended

to require a district judge to review a magistrate's report[.]"); *United States. v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (the court must review de novo magistrate's findings and recommendations if objection is made, "but not otherwise").

Although review is not required in the absence of objections, the Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard."

Thomas, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the court review the magistrate's findings and recommendations for "clear error on the face of the record."

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Acosta's Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Judge Acosta's Findings and Recommendation, Dkt. 22.¹ Plaintiff's Petition for a Writ of Habeas Corpus is **DENIED** and this case is dismissed.

The Court declines to issue a Certificate of Appealability on the basis that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 25th day of August, 2014.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge

¹ The Court notes that this case involves a claim of actual innocence of the underlying crime. Petitioner does not assert, nor does there appear to be a basis to assert, a claim of actual innocence of the sentence, which may involve additional analysis. *See Harris v. Dist. Court of S. Indiana*, 989 F. Supp. 2d 1088 (D. Or. 2013).